



Health and Human Services Agency California Office of HIPAA Implementation

POLICY MEMORANDUM

TO: Department HIPAA Legal Counsel
Department HIPAA Coordinators
Department HIPAA Privacy Officers

FROM: CALIFORNIA OFFICE OF HIPAA IMPLEMENTATION (CalOHI)

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| Title: Preemption Analyses of the Information Practices Act and the California Public Records Act | Number: PM 2002-06 |
| Subject: HIPAA Preemption of State Health Information Privacy Law | Issue Date: September 13, 2002 |
| Reference(s): Federal HIPAA Privacy Regulations [45 C.F.R. Parts 160, 164] Information Practices Act [Civ. Code §1798, et. seq.] California Public Records Act [Gov. Code § 6250, et. seq.] | Expiration Date: October 15, 2002 |

PURPOSE

To notify HIPAA covered and impacted State Departments of the draft HIPAA preemption analyses of the Information Practices Act (IPA) and the California Public Records Act (PRA) prepared by CalOHI and posted in the "Legal Issues" section of the CalOHI website at www.ohi.ca.gov. CalOHI would like Departments' HIPAA counsel to review this Policy Memorandum and to inform CalOHI of any corrections, comments, etc. **no later than October 10, 2002.**

BACKGROUND

State Departments that have been identified as either covered or impacted by HIPAA must be in compliance with federal privacy regulations promulgated pursuant to HIPAA by April 14, 2003. The HIPAA privacy regulations will, with some limited exceptions, preempt less stringent State health information privacy laws with the result being that the privacy laws State entities must comply with will be a combination of State and HIPAA privacy provisions. Accordingly, the identification and preemption analysis of all of the State's health information privacy laws is critical because covered and impacted State agencies will need to know which privacy laws to follow in order to comply with HIPAA, and to assure that State health information laws are interpreted uniformly vis à vis HIPAA by all HIPAA-covered/impacted State entities. Primary analysis of State health information privacy statutes that apply to all covered State entities is one of a number of activities CalOHI is undertaking to assist State entities in determining HIPAA/State health information privacy law preemption issues.

**DRAFT IPA AND
PRA ANALYSES**

IPA ANALYSIS

The Information Practices Act is the State's equivalent of the Federal Privacy Act. It regulates the collection, use and disclosure of personal information, including personal health information protected under HIPAA, by State agencies. The IPA applies to State agencies, offices, officers, departments, divisions, bureaus, boards, and commissions. (Civ. Code § 1798.3.) It is not applicable to the State Compensation Insurance Fund, or to city or county agencies. (Civ. Code §§ 1798.3 and 1798.14, and Gov. Code § 6252.) A draft preemption analysis of the provisions of the IPA is posted in the "Legal Issues" section of the CalOHI website at www.ohi.ca.gov. In addition, separate links from this site contain a draft summary matrix of the preemption analysis of the IPA, a draft list of the IPA provisions that are preempted by HIPAA, and a draft list of the provisions of the IPA that are more stringent than corresponding HIPAA provisions, and the complete text of the IPA.

PRA ANALYSIS

The California Public Records Act is the State's equivalent of the Federal Freedom of Information Act. It regulates access by the public-to-public records held by government agencies, including medical information protected under HIPAA. The PRA applies to all State and local government agencies (including counties), offices, officers, departments, divisions, bureaus, boards, and commissions. (Gov. Code § 6252(a), (b).) It is not applicable to the Legislature or the Judicial Branch. (Gov. Code § 6252(a).) A draft preemption analysis of the provisions of the PRA is posted in the

“Legal Issues” section of the CalOHI website at www.ohi.ca.gov. In addition, separate links from this site contains a draft summary matrix of the preemption analysis of the PRA and the complete text of the PRA.

NEXT STEPS

The analyses of the IPA and the PRA will remain in draft form on the CalOHI website for a comment period, which will end **October 10, 2002**. Thereafter, the analyses will be updated or corrected as needed and placed on the CalOHI website in final form on October 15, 2002 for use in HIPAA implementation. At that time the analyses will become the final and official approved analyses of CalOHI.

Please have your departments’ HIPAA legal counsel carefully review these draft analyses documents and forward any comments, corrections, etc. to the attention of:

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CONTACT

To obtain an electronic copy of this Policy Memorandum, please see the CalOHI website at: www.ohi.ca.gov. Please contact Stephen Stuart, CalOHI Staff Counsel, at the above address with any questions.

Original signed by Burt Cohen

BURT R. COHEN
Acting Director
California Office of HIPAA Implementation

- c: HIPAA Steering Committee Members
Steve Kessler, Department of Finance
Peter Harbage, Health and Human Services Agency
Joanne McNabb, Office of Privacy Protection